

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
CINCINNATI, OHIO

| | | |
|------------------------------|---|-------------------------------------|
| ROBERT W. FERRELL | : | CASE NO. 1:02-cv-00190 |
| | : | (Black, J.) |
| Plaintiff, | : | |
| v. | : | MOTIONS IN LIMINE OF DEFENDANT |
| | : | <u>LAKOTA LOCAL SCHOOL DISTRICT</u> |
| LAKOTA SCHOOL DISTRICT aka | : | |
| LAKOTA LOCAL SCHOOL DISTRICT | : | |
| | : | |
| Defendant. | : | |

Now comes defendant Lakota School District aka Lakota Local School District and respectfully moves this Court for an Order in Limine excluding testimony and/or exhibits anticipated to be offered by plaintiffs regarding punitive damages.

MEMORANDUM

Plaintiff did not seek punitive damages in his Complaint. At no time has Plaintiff mentioned seeking punitive damages. However, Plaintiff's proposed jury instructions and interrogatories now reference a claim for punitive damages.

Plaintiff should be prohibited from submitting any jury instructions on the issue of punitive damages, or making any such claim. Lakota prepared its defense of this action under the impression that Plaintiff was not seeking punitive damages. A finding of punitive damages requires malice and/or reckless indifference on the part of the defendant. Such theories have never been pleaded, questioned in any deposition, briefed by either party, or mentioned in a hearing or otherwise.

Lakota would have investigated the merits of such an assertion during discovery and would have briefed the issue for this court if the threat of punitive damages was ever articulated. Instead, Mr. Ferrell has attempted to slip in the issue of punitive damages during the eleventh hour of trial preparation effectively preventing Lakota the opportunity to properly prepare a defense. This last-minute claim for punitive damages prejudices Lakota.

For the above reasons any testimony, exhibits, and/or jury instructions relating to punitive damages must be excluded from evidence and the jury in this matter.

Respectfully submitted,

/s/ Thomas M. Green

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Trial attorney for defendant Lakota School

District aka Lakota Local School District

CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: None and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: Richard L. Hurchanik, Esq., 110 North Third Street, Hamilton, Ohio 45011.

/s/ Thomas M. Green

THOMAS M. GREEN (0016361)